82-1431

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

No.

LEROY CLARKE, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT.

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QUESTIONS PRESENTED

I.

Did the trial court's instruction to the jury on reasonable doubt impermissibly shift the burden of proof to Petitioner to establish a doubt for which a juror could articulate a reason before acquitting him?

II.

Did the trial court err by defining reasonable doubt as a substantial doubt for which a reason must be given? Further, did the trial court err by refusing Petitioner's requested instruction number 11 on reasonable doubt? Did the trial court's instruction deny Petitioner due process of law by reducing the State's burden to prove each element of the crime beyond a reasonable doubt?

III.

Did the trial judge improperly define criminal intent as an element of murder?

IV.

Did the trial court err by refusing to give the jury Petitioner's requested charge number 4 which distinguished between the terms "not guilty" and "innocent"?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Memorandum Opinion No. 82-MO-371, filed December 28, 1982, as reproduced in Petitioner's Appendix A at page 1.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

I.

Did the trial court's instruction to the jury on reasonable doubt impermissibly shift the burden of proof to Petitioner to establish a doubt for which a juror could articulate a reason before acquitting him?

II.

Did the trial court err by defining reasonable doubt as a substantial doubt for which a reason must be given? Further, did the trial court err by refusing Petitioner's requested instruction number 11 on reasonable doubt? Did the trial court's instruction deny Petitioner due process of law by reducing the State's burden to prove each element of the crime beyond a reasonable doubt?

ARGUMENT

I. and II.

The trial judge's instruction to the jury on reasonable doubt did not impermissibly shift the burden of proof to Petitioner to establish a doubt for which a juror could articulate a reason before acquitting Petitioner. The trial judge did not err by defining "reasonable doubt" as a substantial doubt for which a reason must be given; further the trial judge did not err by refusing Petitioner's requested instruction number 11 on reasonable doubt. The trial judge's jury instructions on reasonable doubt did not in any manner deny Petitioner due process of law by reducing the State's burden to prove each element of the crime beyond a reasonable doubt. [Petitioner's Arguments I and II].

Petitioner contends the trial judge erred in his charge on reasonable doubt, because his phraseology impermissibly shifted the burden of proof to Appellant to establish a reasonable doubt as to his guilt, and incorrectly charged the jury that they had to articulate a reason for that doubt. Petitioner contends the trial judge's use of the word "one" in the following context may have allowed the jury to infer that Appellant had to establish reasonable doubt:

> Now by the term reasonable doubt we mean a doubt for which <u>one</u> can give a reason. ... We speak of a reasonable doubt, one arising out of the evidence or the lack of evidence for which <u>one</u> honestly seeking to find the truth can give a reason. If upon the whole case <u>you</u> have a reasonable doubt, the defendant is entitled to that doubt and the benefit of that doubt; and you must find him

not guilty and acquit
him.
(Tr. p. 270, line 20 -
p. 271, line 14) (emphasis
added).

In the context of the trial judge's extensive charge on the presumption of innocence, the State's burden of proof and reasonable doubt, the above argument has no merit. The trial judge continually stressed that proof of each element of murder must be beyond a reasonable doubt. See Tr. p. 269, line 13 - p. 271, line 21; p. 274, lines 3-4; p. 275, lines 3-14.

Petitioner then contends the trial judge erroneously equated "substantial doubt" with "reasonable doubt," thereby reducing the State's burden to establish every element of the crime beyond a reasonable doubt. Respondent disagrees. The South Carolina Supreme Court has recently upheld the validity of a

virtually identical charge as fully complying with the dictates of In the matter of Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Butler, 277 S.C. 452, 290 S.E.2d 1 (1982). Consequently, the charge in question is in accord with the prior case law of this State.

"The purpose of a charge is to enlighten the jury." State v. DuRant, 87 S.C. 532, 70 S.E. 306 (1911). An assignment of error which is predicated upon isolated excerpts which standing alone might be misleading fails if the instructions as a whole are free from error. State v. Daniels, 231 S.C. 176, 97 S.E.2d 902 (1957). Respondent maintains the trial judge accurately instructed the jury concerning reasonable doubt and Petitioner's contention that he was prejudiced by that charge is without merit.

Petitioner further contends the trial judge erred by refusing his requested charge number 11, defining reasonable doubt. See Petitioner's Appendix B(6) at p. 11.

Respondent maintains that because Petitioner's exception V violated the South Carolina Supreme Court's Rule 4, §6 in several respects, that issue was not properly before the South Carolina Supreme Court and thus is not properly before this Court. The exception alleged: "That the trial judge erred in refusing the Appellant's requested charges numbered 2, 4, 5, 6, 7, 11. Appellant was entitled to have such requests charged to the jury because Appellant's requests were proper instructions under the law, and were necessary to properly and fully instruct the jury." (Tr. p. 323).

As the South Carolina Supreme Court has recently stated, such an exception "requires the Court to 'grope in the dark' in an effort to ascertain the precise points in issue." State v. Richardson, et al., ___ S.C. ___, 294 S.E.2d 422 (1982), citing State v. Lawrence, 226 S.C. 423, 223 S.E.2d 856 (1976); State v. Fields, 264 S.C. 260, 214 S.E.2d 320 (1975).

The South Carolina Supreme Court has specifically stated that a mere reference to a request to charge will not be considered as it violates Rule 4, §6 in at least three particulars. State v. Cater, 241 S.C. 262, 127 S.E.2d 822 (1962).

Respondent further contends that even if the South Carolina Supreme Court determined not to dismiss the exception as defective, the trial judge did not

err in refusing Appellant's request to charge number 11 because his charge encompassed the proposition of law requested by Appellant.

QUESTION PRESENTED

III.

Did the trial judge improperly define criminal intent as an element of murder?

ARGUMENT

III.

The trial judge's instructions properly defined criminal intent as an element of murder. [Petitioner's Argument III].

Petitioner contends the trial judge erred in refusing to instruct the jury on his requested charge number 5 as a proper definition of criminal intent. See Petition, p. 31, fn. 1. Respondent disagrees.

Initially, Respondent maintains that because Appellant's exception V violated South Carolina Supreme Court Rule 4, §6 in several respects, that

issue was not properly before the South Carolina Supreme Court and thus is not properly before this Court. The exception alleged: "That the trial judge erred in refusing the Appellant's requested charges number 2, 4, 5, 6, 7, 11. Appellant was entitled to have such requests charged to the jury because Appellant's requests were proper instructions under the law, and were necessary to properly and fully instruct the jury." (Tr. p. 323.)

As the South Carolina Supreme Court has recently stated, such an exception "requires the Court to 'grope in the dark' in an effort to ascertain the precise points in issue." State v. Richardson, et al., ___ S.C. ___, 294 S.E.2d 422 (1982), citing State v. Lawrence, 226 S.C. 423, 223 S.E.2d 856 (1976); State v. Fields, 264 S.C. 260, 214 S.E.2d 320 (1975).

The South Carolina Supreme Court has specifically stated that a mere reference to a request to charge will not be considered on appeal as it violates Rule 4, §6 in at least three particulars. State v. Cater, 241 S.C. 262, 127 S.E.2d 822 (1962).

Respondent further contends that even if the South Carolina Supreme Court determined not to dismiss Appellant's exception as defective, the trial judge did not err in refusing Appellant's request to charge number 5, because his charge encompassed that proposition of law. Respondent maintains that the trial judge's general definition of murder (Tr. p. 273, line 22 - p. 274, line 4), when read in context of the entire charge (Tr. p. 268, line 24 - p. 279, line 10; p. 288, line 16 - p. 289, line 15), sufficiently informed the jury

of the correct law regarding intent. The South Carolina Supreme Court has stated that in reviewing a jury charge for error the charge will be considered as a whole in light of the evidence presented at trial. State v. Thompson, ___ S.C. ___, 292 S.E.2d 581 (1982).

The case law reveals that the question of felonious intent is an issue of fact for the jury. State v. Williams, 237 S.C. 252, 116 S.E.2d 858 (1960). Absent an admission by the defendant, proof of intent necessarily rests on inferences from the defendant's conduct, State v. Haney, 257 S.C. 89, 184 S.E.2d 344 (1971), and such conduct should be considered in light of the given circumstances, State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971).

Respondent maintains that the trial judge's charge adequately covered the

substance of defendant's requested charge; thus the requested charge was properly refused. See State v. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981); State v. McDowell, 272 S.C. 203, 249 S.E.2d 916 (1978). Further, the South Carolina Supreme Court has held that the trial judge has no duty to grant a requested charge which does not correctly state the law or which may confuse or mislead the jury. Respondent asserts that Petitioner's requested instruction on intent could have confused or misled the jury, and that the trial judge properly refused to so charge. State v. Simmons, 269 S.C. 649, 239 S.E.2d 656 (1977).

QUESTION PRESENTED

IV.

Did the trial court err by refusing to give the jury Petitioner's requested charge number 4 which distinguished between the terms "not guilty" and "innocent"?

ARGUMENT

IV.

The trial court did not err by refusing to charge Petitioner's request to charge number 4. [Petitioner's Argument IV].

Petitioner contends the trial judge erred in refusing to charge the jury his request to charge number 4, found at page 35 of the Petition. According to Petitioner, the trial judge's charge did not properly inform the jury of the distinction between the two terms. Respondent disagrees.

Initially, Respondent maintains that because Appellant's exception V violated South Carolina Supreme Court Rule 4, §6 in several respects, that issue was not properly before the South Carolina Supreme Court and thus is not properly before this Court. The exception alleged: "That the trial judge erred in refusing the Appellant's requested charges numbered 2, 4, 5, 6, 7, 11. Appellant was entitled to have such requests charged to the jury because Appellant's requests were proper instructions under the law and were necessary to properly and fully instruct the jury." (Tr. p. 323).

As the South Carolina Supreme Court has recently stated, such an exception "requires the Court to 'grope in the dark' in an effort to ascertain the precise points in issue." State v.

Richardson, et al., ___ S.C. ___, 294 S.E.2d 422 (1982), citing State v. Lawrence, 226 S.C. 423, 223 S.E.2d 856 (1976); State v. Fields, 264 S.C. 260, 214 S.E.2d 320 (1975).

The South Carolina Supreme Court has stated specifically that a mere reference to a request to charge will not be considered, as it violates Rule 4, §6 in at least three particulars. State v. Cater, 241 S.C. 262, 127 S.E.2d 822 (1962).

Respondent further contends that even if the South Carolina Supreme Court determined not to dismiss this exception as defective, the trial judge did not err in refusing Petitioner's request to charge number 4 because his charge encompassed that proposition of law requested by Petitioner.

Petitioner argues that the trial judge's failure to charge his request to charge number 4 (Tr. p. 304) failed to inform the jury of the legal difference between the two terms. Petitioner contends the jury could have believed he committed the crime, but not that he committed it beyond a reasonable doubt.

Respondent maintains the requested charge is misleading because it might confuse the jury as to the burden of proof. A trial judge has no duty to give an instruction which is either a misstatement of the law or which may confuse and mislead the jury. State v. Simmons, 269 S.C. 649, 239 S.E.2d 656 (1977). Respondent further contends the last sentence of charge number 4 ["the charges were simply not proven by the State."] would be an impermissible comment on the facts. Further,

Respondent maintains the trial judge's charge regarding the two possible verdicts (Tr. p. 277, line 16 - p. 278, line 3), when read in conjunction with his extensive charge regarding the presumption of innocence and the State's burden of proof (Tr. p. 269, line 13 - p. 271, line 21), completely and clearly delineated the jury's role in imposing a verdict.

This Court has held that any alleged error in the judge's instruction must be read in context of the entire charge. State v. Thompson, ___ S.C. ___, 292 S.E.2d 581 (1982). When viewed in context of the entire charge in this case, Respondent maintains that there was no error and that the trial judge properly refused requested charge number 4.

The Respondent thus submits that the holding of the South Carolina Supreme Court in this case did not deny Petitioner any of his constitutional rights, and that the Petitioner is not entitled to a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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Attorney General

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Assistant Attorney General

ATTORNEYS FOR RESPONDENT.

APPENDIX

(Tr. p. 268, lines 24-25)

THE COURT: Ladies and gentlemen of the jury, by this bill of indictment, the paper which I hold in

(Tr. p. 269, lines 1-25)

my hand, the State of South Carolina charges the defendant at the Bar, Leroy C. Clarke, with the crime of murder. You will have this with you during your deliberations. You may read it; but you may not consider that it has any weight, because this is just an accusation that the State makes against Mr. Clarke. This is not evidence. This is not proof. You may not give it any consideration other than to find out what the charges are.

Under the law of South Carolina, the defendant is charged with the

offense known as murder. To this indictment, the defendant has pled not guilty. The plea of not guilty places the burden upon the State of South Carolina to prove his guilt beyond a reasonable doubt to the satisfaction of each and every one of you. Such burden of proof is never shifted to the defendant. It remains with the State of South Carolina throughout the matter.

A person charged with a criminal offense in this State, and in all the states our great country, are presumed to be innocent of the charges. They are never required to prove their innocence because, as you ladies and gentlemen know, that's not always possible. A presumption of innocence attaches to the defendant at the time of his first

(Tr. p. 270, lines 1-25)

appearance at the time of his first arraignment, and it remains with him throughout his trial and throughout your deliberations. It can only be removed by evidence which convinces you of his guilt beyond a reasonable doubt.

Our Supreme Court has said that the presumption of innocence is like a cloak or robe of rightecusness placed about the shoulders of the defendant; and it assigns him to that class, the innocent, until that presumptive robe of righteousness has been stripped from his body by evidence satisfying you of his guilt beyond a reasonable doubt.

I say to you, ladies and gentlemen, that's not a mere legal phrase. It's not just legal theory, but it is a substantial right to which this defendant and every defendant is

entitled. The presumption of innocence stays with him until you ladies and gentlemen are satisfied that the evidence has convinced you beyond a reasonable doubt of his guilt.

Now by the term reasonable doubt we mean a doubt for which one can give a reason. Not a whimsical doubt. Not a fanciful doubt. Not an imaginary doubt. Not a weak doubt. Not a slight doubt. It's none of those things. As you and I know, we might doubt anything. We might well doubt where this

(Tr. p. 271, lines 1-25)

electricity comes from because, if you're like me, you're not of a scientific mind; but we know that electricity comes from generators that may be far off or they may be near. And so if we doubted that this was generated by the turning of a motor, we would know

that that was not a reasonable doubt.

We speak of a reasonable doubt as a substantial doubt, one arising out of the evidence or the lack of evidence for which one honestly seeking to find the truth can give a reason. If upon the whole case you have a reasonable doubt, the defendant is entitled to that doubt, or the benefit of that doubt; and you must find him not guilty and acquit him.

Should you have a reasonable doubt as to the defense which he has put up, again you must give him the benefit of that doubt and acquit him. If, on the other hand, you feel that the State has established the guilt of the defendant beyond a reasonable doubt, then it would equally be your duty to find him, upon your sworn oath, guilty.

Under the Constitution of our State, you ladies and gentlemen are the

only judges of the facts of this case. It was my duty, during the trial, to pass upon the admissibility of the evidence or

(Tr. p. 272, lines 1-25)

testimony; but the weight of that testimony or evidence, the probative value of it, is for you and you alone.

It is your duty to weigh the evidence, to consider the evidence, to determine the force and effect of that evidence, just as you heard it from the witness stand. I'm not allowed to charge you, either directly or indirectly, on any matter of fact. That simply is not my job. It is yours.

If during this trial, because of some ruling I've made, some statement I've made, something I've done or failed to do, you feel that you recognize my feeling about the evidence, you would

disregard that because, as I have said to you, ladies and gentlemen, that simply isn't my job.

As the judges of the facts, you ladies and gentlemen must pass upon the credibility or the believability of the several witnesses who have testified from that witness stand. In doing this you should take into consideration any interest that a witness has in the outcome of the case, any bias or prejudice that a witness may have, the opportunity of the witness for observation and knowledge, the demeanor of the witness on the witness stand, and anything else that might affect your feelings in

(Tr. p. 273, lines 1-25)

regard to the credibility of the witnesses.

It is your job, ladies and

gentlemen, to find the truth, whether it comes from the witnesses for the State or witnesses for the defendant, or both. I tell you, ladies and gentlemen, that you may believe one witness against several. You may believe several against one. You may believe everything a witness says. You may believe nothing a witness says. On the other hand, you may believe a part of what a witness says and disbelieve a part of what that same witness says. Now you may not do that arbitrarily, but only if there is a reason in the evidence for your so doing.

Having determined what the true facts are, ladies and gentlemen, it then becomes your duty to take the law as I now charge it to you and apply it to those facts and thereby return a true verdict, a just verdict, a verdict fair to the defendant and fair to the State

of South Carolina.

I charge you, ladies and gentlemen, that this bill of indictment charges the crime of murder. Murder is defined as the killing, or the felonious killing, of any person, with malice aforethought, either express or implied. In order to convict one of murder, the State must not only prove the killing

(Tr. p. 274, lines 1-25)

of the deceased by the defendant, but it must also prove criminal intent and that it was done with malice aforethought. Such proof, of course, must be beyond a reasonable doubt.

You ask what is malice? Malice is defined in the law of homicide as a term of art; that is, a technical term importing wickedness and excluding just cause or excuse. It is something which springs from wickedness, from depravity,

from a heart devoid of social duty and fatally bent upon mischief. The words express or implied do not mean different kinds of malice, but merely the manner in which the only known--the only kind known to the law may be shown to exist. That is, either expressed or implied.

Malice may be expressed as where previous threats or vengeance or lying in wait, or other circumstances, show directly that an intent to kill was really entertained. Malice may also be implied as where, though no express intent to kill is proven by express or direct evidence, it is indirectly but necessarily inferred from the facts and the circumstances of the case which are proven.

Malice may be implied or presumed from the willful, deliberate and

intentional doing of an unlawful act, without just cause or excuse. In its

(Tr. p. 275, lines 1-25)

general signification, malice means the doing of a wrongful act intentionally, without justification or excuse. Malice may be inferred, as I say, or presumed, from the use of a deadly weapon; but that presumption, ladies and gentlemen, like all presumptions, is rebuttable and may be rebutted by evidence that raises a reasonable doubt in your mind as to the truth of the presumed fact.

The defendant does not have the burden of disproving the presumed fact, either by a preponderance of the evidence nor beyond a reasonable doubt; but it is sufficient, if the evidence raises a reasonable doubt in your mind of the existence of the presumed fact.

The defendant has entered, in this

case, what we lawyers call the defense of self defense; and I tell you that self defense is a good defense. Based upon the prior decisions of our Court, it must appear that the defendant was without fault in bringing on the difficulty, that he actually believed he was in imminent danger of losing his life or of sustaining serious bodily injury.

If his defense is based on his actual belief of imminent danger that a reasonable prudent person of ordinary firmness and courage would have entertained

(Tr. p. 276, lines 1-25)

the same belief, or if his defense is based on his being in actual and imminent danger that the circumstances were such as would warrant a man of ordinary prudence, firmness and courage

to strike the fatal blow in order to save himself from serious bodily harm or of losing his own life.

I tell you that it is one's duty to avoid taking a human life where it is possible to prevent it, even to the extent of retreating from his adversary, unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased. And further, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

Ladies and gentlemen, I sometimes say I'm not concerned with what your verdict will be because that's your responsibility, not mine. Of course,

I'm concerned with what your verdict be. I'm concerned that your verdict speak the truth because that is what you're sworn to do, ladies and gentlemen, a true verdict render, according to the law and evidence, so help you God.

I'm sure, ladies and gentlemen, that during

(Tr. p. 277, lines 1-25)

these few days that we've been together you've heard some of these people in this courtroom, in addressing me, say "Your Honor". They're not speaking to Clyde Eltzroth when they say that, ladies and gentlemen. They speak to the position I hold because, as your presiding judge, I hold in my hands the honor of Berkeley County and of South Carolina. So long as I preside with fairness, that honor will not be soiled. God help me should I ever preside otherwise.

When you come here as judges of the facts and take the solemn oath which you have taken, you must share with me this awesome responsibility. I tell you, ladies and gentlemen, that you have no friends to reward. You have no enemies to punish. Your only responsibility is to speak the truth.

There can be only one of two verdicts in this case. I give these to you now, and pay no attention, ladies and gentlemen, to the order in which I give them to you because I could reverse them just as well. I have to give you one before I can give you the other. If I could give you both of them at one time, of course, I would do that; but I cannot. You may either find the defendant guilty or not guilty, according to the way that you view the evidence.

Each and every one of you must agree on the

(Tr. p. 278, lines 1-25)

verdict before it may be written. When you have all agreed upon a verdict then, Mr. Foreman, you will write the verdict for the jury. You will note on the back of the indictment, printed in bold black type, is the word verdict. Under it are several lines. Write the verdict of the jury on one of those lines, and then you'll see the word foreman down below. Sign your name above that line.

I may have made some error in my charge to you, ladies and gentlemen; and I may have left out some very important rules of law. I'll take that up with these fine gentlemen after you have gone out of the room; and if they call to my mind something that I should charge you further or some correction I should make, I will ask you to come back; and I

will at that time try to correct or extend my remarks.

Take with you the exhibits which have been entered. Take the indictment with you. You may not consider this as evidence, but the exhibits are evidence. Give me two or three minutes before you start your deliberations so that I can discuss these matters with the lawyers.

If you do not hear from me in the next three or four minutes, then start your deliberations.

(Tr. p. 279, lines 1-10)

When you have all agreed, Mr. Foreman write the verdict, sign your name, knock upon the door. Your bailiff will hear you. You will come back, and your verdict will be published, and that will complete your work in regard to this case.

You're not, of course, concerned with punishment in this case, ladies and gentlemen. That's not your responsibility. The only question you're concerned with is whether your verdict shall be guilty or not guilty. You may retire.

(Tr. p. 288, lines 16-25)

THE COURT: Ladies and gentlemen, I charged you that the use of a deadly weapon might cause a presumption of malice. I would say to you, ladies and gentlemen, if the facts are proved sufficient to raise a presumption of malice to your satisfaction, and it is always for you, the jury, to determine from all of the evidence in the case whether or not malice has been proved beyond a reasonable doubt.

In other words, ladies and gentlemen, I tell you that, in regards

to implied or presumed malice,

(Tr. p. 289, lines 1-15)

that is evidentiary. It does not require you to infer malice, but it permits it.

The presumption or inference of malice from the use of a deadly weapon is, therefore, simply an evidentiary fact to be taken into consideration by you ladies and gentlemen of the jury, along with all of the other evidence in the case, and to be given such weight as you ladies and gentlemen determine it should receive.

The inference of malice may be drawn from the use of a deadly weapon if you conclude such is proper, after considering all of the facts and circumstances of the matter. Thank you so much, ladies and gentlemen. You may return to your room, and you gentlemen may return to the other room.

(Tr. p. 304)

CHARGES

DEFENDANT'S REQUEST TO CHARGE NO. 2

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the State has established his guilt by evidence so strong, so clear, and so conclusive, that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an abiding presumption, and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty; or that by the preponderance of the testimony his guilt is more probable than his innocence;

for until his guilt has been proved beyond all reasonable doubt in the precise and narrow terms as charged in the indictment, the presumption of innocence still applies, and they must acquit him. (1 Lee 439, 132 Va. 665).

DEFENDANT'S REQUEST TO CHARGE NO. 4.

The term "not guilty" is synonomous with "innocence." In our system of criminal justice, the term "not guilty" means that the State did not prove the defendant guilty beyond a reasonable doubt of each element of an offense; "not guilty" does not mean that you must find the defendant "innocent" of the crime with which he was charged. The charges were simply not proven by the State.

(Tr. p. 323, lines 7-12)

V.

That the trial judge erred in refusing the Appellant's requested charges numbered 2, 4, 5, 6, 7, and 11. Appellant was entitled to have such requests charged to jury because Appellant's requests were proper instructions on the law, and were necessary to properly and fully instruct the jury.